

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6736 of 1995

SPECIAL CIVIL APPLICATION No 6739 of 1995

SPECIAL CIVIL APPLICATION No 6740 of 1995 and

SPECIAL CIVIL APPLICATION No 6741 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

CHHAGANBHAI HARJIVANBHAI PATEL

Versus

INQUIRY OFFICER

Appearance:

MR BS PATEL for Petitioner

Mr AG URAIZEE, AGP, for the respondents.

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 01/05/96

ORAL JUDGEMENT

Rule. In each of the 4 petitions, service of rule is waived by learned Assistant Government Pleader Mr A.G.Uraizee on behalf of the respondents. Since common questions are involved in this group of four petitions, they are being disposed of by this common judgment upon

joint request.

2. The petitioners are the owners of properties situated in village Ichhapur, Sub-district Choryasi, Surat. The petitioners have also contended that they are the owners of house along with vada land in question. Respondent No.1, Inquiry Officer, Village Site Survey, Surat, upon inquiry found that the petitioners failed to prove the ownership of the vada land. Therefore, respondent No.1 reached to the conclusion that the vada land in each of the petitions is of the ownership of village gram panchayat.

3. Being aggrieved by the order of the respondent No.1, the petitioners carried the matter in appeal before the Assistant Collector, at Surat. The Assistant Collector, Surat rejected all the four appeals of the petitioners on the ground of delay in filing the appeals. The petitioners, therefore, took the matter in revision before the Collector, Surat, who on appreciation of the facts and circumstances, came to the conclusion that the disputed lands are of the ownership of the Government. The order of the Collector in each of the 4 revisions was further questioned before the Government, but without success. The respondent No.4, Additional Secretary, Revenue Department (Appeals), State of Gujarat rejected all the second four revision applications of the petitioners. Hence these petitions under Article 226/227 of the Constitution of India.

4. After having heard the learned advocates appearing for the respective parties and after having examined the facts and circumstances emerging from the record, this Court has no hesitation in finding that the impugned judgments and orders in all the four petitions are vulnerable and suffers from the vice of non-application of mind and also principles of natural justice. Therefore, they are required to be quashed.

5. In Special Civil Application No.6736 of 1995, the house is situated on the land bearing survey No.1212. Vada land is on the survey No.1283 whereas order is passed by the respondent No.1 in respect of survey No.1279. The order of the respondent No.1 came to be confirmed by the respondents Nos.2, 3 and 4. Likewise, in Special Civil Application No.6739 of 1995, the house of the petitioner is situated on the land bearing survey No.1281. Notice came to be issued in respect of land bearing survey No.1284 whereas the order of the respondent No.1 is passed in respect of land bearing survey No.1281. So is the position in Special Civil

Application No.6740 of 1995. The house of the petitioner is at survey No.1278 while notice came to be issued for the vada land bearing survey No.1286. The respondent No.1 passed order in respect of land bearing survey No.1278. There was no dispute in respect of the land bearing survey No.1278. The dispute was with regard to vada land bearing survey No.1286. Similarly, in Special Civil Application No.6741 of 1295, the house of the petitioner is situated at survey No.1282. The vada land in respect of which notice came to be issued is situated at survey No.1283. The respondent No.1 decided that the said land open land bearing survey No.1283 belongs to the village gram panchayat which in revision came to be reversed and the revisional authority, Collector, respondent No.3 decided that the vada land does not belong to the village gram panchayat, but it belongs to the Government. In this petition, it appears from the record that the principles of natural justice are not observed. Notice under section 37(2) of the Bombay Land Revenue Code was not served on the party affected. It is clearly borne out from the record that the petitioner was not served with notice under section 37(2) of the Bombay Land Revenue Code.

6. In view of the aforesaid facts and circumstances and considering the record and after hearing the arguments, this Court has no hesitation in finding that the impugned orders are tainted with vices of non-application of mind and violation of principles of natural justice and non-observance of the provisions of section 37(2) of the Bombay Land Revenue Code.

7. In the result, therefore, the impugned judgments and orders are quashed and set aside. The matters are remanded to the respondent No.1, Inquiry Officer, Village Site Survey, Surat for fresh inquiry and decision in accordance with in the light of the observations made hereinbefore expeditiously. All the four petitions are allowed accordingly. Rule is made absolute to the aforesaid extent with no order as to costs.
